

**City of San Jose  
Request for Qualifications**

**NOTICE TO INTERESTED CONSULTANTS**

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**November 19, 2007**

**The CITY OF SAN JOSE invites Statement of Qualifications submittals for**

**ARCHITECTURAL CONSULTANT DESIGN SERVICES  
AIRPORT AND AIRLINES TENANT IMPROVEMENTS**

This Request for Qualifications solicitation has been developed in accordance with the City of San Jose, Council adopted, Qualifications Selection Process to encourage participation of well-qualified architectural and engineering consultants available to provide the services and expertise necessary to satisfy the varied architectural consultant design services for City Projects. The City Qualifications Based Consultant Selection (QBCS) policy encourages participation by qualified Architects and Engineers while promoting broad competition, local and small business participation and diversity in the marketplace. QBCS represents the City's intent to provide a fair and objective process that yields the highest quality professional services at a fair and reasonable price.

The City of San Jose Public Works Department seeks responsible Architectural Consultant firms to submit Statements of Qualifications (SOQ) demonstrating relevant experience and ability to provide professional services for the projects listed in this Request for Qualifications.

The Request for Qualifications package may be obtained on the City's Bid Hotline Information website,

**<https://cpms.sanjoseca.gov/pub/BidHotline/rfp/>**

Or, by contacting: **Victoria M. Ribbs**  
**City of San Jose, Department of Public Works**  
**Airport Construction Division**  
**Telephone: 408-501-0593; e-mail: [vrribbs@sjc.org](mailto:vrribbs@sjc.org)**

**FILING OF SUBMITTALS**

A sealed SOQ package must be received by the City of San Jose, on or before

**Thursday, December 13, at 4:00 PM**

It is the sole responsibility of the Proposer to see that the submittal is received before the stated deadline. Failure to provide the information requested herein prior to the time and date specified above will preclude participation in the selection process.

**END OF NOTICE**

# **Request for Qualification Statement**

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## **Architectural Design Consultant Services For the City of San Jose**

### **AIRPORT AND AIRLINE TENANT IMPROVEMNENTS PROJECT**

Issue Date: November 19, 2007

Due Date: 4:00 PM, December 13, 2007

**CITY OF SAN JOSE  
Department of Public Works  
Airport Construction Division  
1732 North First Street, Suite 600  
San Jose, CA 95112-4538**

# RFQ: ARCHITECTURAL FIRMS

November 19, 2007

Page 3



*Department of Public Works*

AIRPORT CONSTRUCTION DIVISION

To: **ARCHITECTURAL FIRMS**

Re: REQUEST FOR QUALIFICATIONS (RFQ)  
ARCHITECTURAL CONSULTANT DESIGN SERVICES

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## **I. INTRODUCTION**

The City of San Jose-Airport Construction Division is seeking firms or individuals to provide architectural consultant services to the City's Department of Public Works. The services are to compliment ongoing project work at the Norman Y. Mineta San Jose International Airport (Airport), San Jose, CA, for the Terminal Area Improvement Program (TAIP). The selected firm will be required to provide multidisciplinary architectural services for the project as described below.

The Request for Qualifications (RFQ) identifies the general project scope and procedures for the consultant selection process. Responding Proposers shall have relevant experience and the ability to provide professional services for the projects described below.

## **II. PROJECT**

The City Council approved the Airport's Terminal Area Improvement Program (TAIP) on November 15, 2005. The TAIP will be constructed in two phases. Phase 1 includes renovation and expansion of the existing Terminal A, construction of a new Terminal B, construction of a new rental car garage, realignment and widening of the airport roadways, and demolition of the existing Terminal C building. Phase 2 of the TAIP, to be constructed upon attainment of passenger volumes required to fiscally support the construction, will provide for the second phase of Terminal B and a south concourse facility.

At specific milestones of TAIP Phase 1, airlines will be relocated to their own permanent office and operation spaces. This will require programming, configuration of new space or reconfiguration and upgrade of existing ramp offices and operations space. Work includes programming, new walls and ceilings, finishes, electrical/lighting/low voltage, mechanical and plumbing, restrooms, signage, etc, and possible move coordination.

The Architectural design services requested include but are not limited to, tenant improvements at Terminal A, Terminal A+, Terminal B, the North Concourse, and Terminal A Garage. Estimated project costs are approximately Fifteen Million Dollars (\$15,000,000.00).

### **III. CONSULTANT SCOPE OF SERVICES:**

The City is seeking to select one (1) architectural and engineering consultant to enter into an Agreement in an amount not to exceed One Million Five Hundred Thousand Dollars (\$1,500,000.00). The Agreement is to be utilized to provide services necessary for the architectural and engineering design services to be completed in compliance with all applicable federal, state and local regulations. All architectural and engineering work shall be conducted in conformance with applicable California state law, including but not limited to, the Business and Professions Code sections 6735 and 7835.

The Consultant may be asked to perform any or all tasks as shown below as part of the Architectural Design services:

- A. Tasks per Phases:
  - 1. Programming, Conceptual Plan, and Design Services:
    - a. Collect relevant site information, historical and/or information
    - b. Define project scope and project program.
    - c. Prepare design scenarios.
    - d. Prepare illustrative plans and other graphics for presentation – character sketches, detail plans and sections, rendered perspectives.
    - e. Prepare preliminary cost estimates.
    - f. Present formal plan presentations to Airport Master Plan Team.
  - 2. Contract Document Services:
    - a. Prepare detailed construction drawings based on approved project design.
    - b. Prepare written technical specifications for construction of the approved project design.
    - c. Assemble Special Provisions document including the contract bid documents and the technical specifications.
    - d. Prepare detailed cost estimates.
  - 3. Bid and Construction Administration:
    - a. Assist with pre-bid questions, clarifications and preparation of addenda.
    - b. Review all material submittals from the contractor for compliance with the construction specifications.
    - c. Provide necessary support to the Construction Manager (Department of Public Works) during construction.
    - d. Assist in response to clarification requests and the preparation of change orders.
    - e. Evaluate Construction Change Orders .
    - f. Provide Record Documents at Project Close-out.
- B. The Consultant shall provide expertise and/or hire and coordinate with the proper subconsultants, including, but not limited to the following related professional disciplines:

## RFQ: ARCHITECTURAL FIRMS

November 19, 2007

Page 5

Structural Engineering	Construction Administration
Electrical Engineering	Acoustics
Mechanical Engineering	Interior Design
Sustainable Design	Lighting,
Cost Estimating	Low Voltage

- C. The Consultant shall be familiar with all applicable Federal, State, and Local laws and ordinances, regulations, Codes and other regulatory procedures including, but not limited to: Americans with Disabilities Act (ADA), the California Building Code (CBC), California Mechanical Code (CMC), California Plumbing Code (CPC), California Electric Code (CEC), California Fire Code (CFC), American Society of Testing and Materials (ASTM), City Standard Specifications, Details and Policies.

### IV. CONSULTANT SELECTION POLICY:

In accordance with the Council Adopted, Qualifications Based Consultant Selection Policy, Screening Panel representatives including the Implementing Department (Public Works) and Owner Department (Airport) will apply a scoring matrix based on the evaluation criteria listed in Section V.D. to establish a ranked consultant list best matching the Owner Department's needs. The numerically ranked consultant short list based upon the screening qualification scores will be used to determine a short list of candidates to be interviewed.

### IV. STATEMENT OF QUALIFICATIONS (SOQ) SUBMITTAL

- A. **Deliverables:** Submit three (5) color copies of the Statement of Qualifications each in separate binders. Each SOQ shall be sectioned using divider tabs corresponding to:
1. Prerequisite:
    - a. Cover Letter
    - b. Firm Profile
  2. Organization and Approach:
  3. Scope of Services
  4. Statement of Litigation History
  5. References
  6. Relevant Airport Work
  7. Local Business Enterprise/Small Business Enterprise Form
  8. Conflict of Interest Form
- B. The complete Qualification Statement should be delivered via mail, courier or hand delivered to:
1. **CITY OF SAN JOSE, Department of Public Works /  
Airport Construction Division  
1732 North First Street, Suite 600  
San Jose, CA 95112-4538**

## **RFQ: ARCHITECTURAL FIRMS**

November 19, 2007

Page 6

**Attn.: Victoria M. Ribbs**

2. Statements must be received at the above address no later than:

**4:00 PM, December 13, 2007**

The City will not accept any SOQ after this time. Identify the submission by including the following information on the outside of the package.

### **Re: SOQ for Architectural Consultant Design Services**

3. No oversize drawings (larger than 8-1/2 x 11) shall be included in the submittal. The completed submittal shall not exceed Fifty (50) pages and shall be completely comprised of paper that can be recycled.
4. Identify in the submittal one subconsultant or self perform for each discipline listed in Section IIIB, include a one page firm profile for each subconsultant.
5. Statements of Qualifications will not be maintained after 90 days from date of submission. Facsimile, emailed or electronic format proposals are not acceptable.

### **C. Statement of Qualifications**

In order to be considered, all requested qualification information below shall be submitted. All prospective Consultants must complete and submit all qualification and other supplemental information, in one complete package by the date stated. The City will not accept information or documents from parties other than the submitting Proposer.

1. Provide a Cover Letter signed by an authorized representative of the firm to the City of San Jose requesting interview selection consideration for the project noted in this solicitation stating general qualifications, expertise and ability to perform the scope of services as described in this RFQ.
  - a. Include a brief statement acknowledging that the information provided in the SOQ is true, accurate and represents the most current information available as of the date of this RFQ.
  - b. Include a brief statement the of the Proposer's willingness to accept the City's standard Agreement for Professional Consultant Services as is, with no modifications. See Attachment A.
  - c. Provide a statement that the firm can obtain the insurance requirements as stated in the Attachment B Insurance Requirements for Consultants in subsection A Minimum Scope of Insurance and with the minimum Limits of Insurance as noted in subsection B Minimum Limits of Insurance.

## RFQ: ARCHITECTURAL FIRMS

November 19, 2007

Page 7

- d. Provide a brief statement that the Proposer has the ability to submit construction documents in AutoCAD R2004 or later version, and/or CADD software interchangeable to AutoCAD format.
  - e. Acknowledge and agree to comply with the City's Gift Ordinance and Code of Ethics. (See Attachment E)
2. Provide Consultant Firm Profile: responding to each of the items below:
    - a. Name of firm, address, telephone and fax number(s)
    - b. Three (3) primary firm contacts, email(s), and State licenses.
    - c. Include a brief summary of firm's staff professionals and technical profile including number of personnel by type and positions. Attach resumes of the firms proposed project team members.

### D. Selection Criteria

The information submitted in the SOQ (written response) will be evaluated by the Screening Panel. Each Screening Panel member will evaluate the SOQ based on a matrix of requirements, qualifications and experience and scored on a point system. Each Screening Panel member will rank (1, 2, 3, etc.) based on the total score and then averaged for the entire Screening Panel for the final ranking. A short list of the highest ranked firms will be interviewed by the Interview Panel. Each Interview Panel member will evaluate the presentation and response to pre-selected questions at the interview, based on a matrix of requirements, qualifications and experience and scored on a point system. Each Interview Panel member will rank (1, 2,3, etc.) based on the total score and then averaged for the entire Interview Panel for the final ranking. The individual sum of the SOQ and Interview is 100 points each. Included in each of the 100 points is 5 points, for Local and Small Business preference.

	<b><u>Evaluation Criteria</u></b>	<i>Weight</i>
<b>D.1.</b>	<b><u>Completeness of Response</u></b> Responses to this RFQ must be complete. Responses that do not include the proposal content requirements identified within the RFQ and subsequent Addenda and do not address each of the items listed below will be considered incomplete, be rated a Fail in the Evaluation Criteria and will receive no further consideration.	<b><i>Pass/Fail</i></b>

**RFQ: ARCHITECTURAL FIRMS**

November 19, 2007

Page 8

<b>D.2</b>	<b><u>Organization and Approach</u></b>	<b>35 Points TOTAL</b>
D.2.a.	<u>Roles and Organization of Proposed Team</u> <ul style="list-style-type: none"><li>Proposes adequate and appropriate disciplines of project team.</li><li>Some or all of team members (firms) have previously work together on similar project(s).</li><li>Overall organization of the team is relevant to City needs.</li></ul>	10 Points
D.2.b	<u>Project and Management Approach</u> <ul style="list-style-type: none"><li>Team is managed by an individual with appropriate experience in similar projects. This person's time is appropriately committed to the project.</li><li>Team successfully addresses ability to provide depth and breadth of services described in Scope of Services.</li><li>Project team and management approach responds to project issues.</li><li>Team structure provides adequate capability to perform both volume and quality of needed work within project schedule milestones.</li></ul>	10 Points
D.2.c	<u>Roles of Key Individuals on the Team</u> <ul style="list-style-type: none"><li>Proposed team members, as demonstrated by enclosed resumes, have relevant experience for their role in the project.</li><li>Key Positions required to execute the team's responsibilities are appropriately staffed.</li></ul>	10 Points
D.2.d	<u>Working Relationship with Public Sector Entities</u> <ul style="list-style-type: none"><li>Team and its leaders have experience working in the public sector and knowledge of public sector processes.</li><li>Team leadership understands the nature of public sector work and its decision-making process.</li></ul>	5 Points
<b>D.3</b>	<b><u>Scope of Service to be Provided</u></b>	<b>25 Points TOTAL</b>
D.3.a	<u>Detailed Scope of Service to be Provided</u> <ul style="list-style-type: none"><li>Proposed scope of service is appropriate for all phases of the work.</li><li>Scope addresses all known project needs and appears achievable in the timeframes set forth in the project schedule.</li></ul>	10 Points
D.3.b	<u>Project Deliverables</u> <ul style="list-style-type: none"><li>Deliverables are appropriate to schedules and scope set forth in above requirements.</li></ul>	10 Points
D.3.c	<u>Cost Control and Budgeting Methodology</u> <ul style="list-style-type: none"><li>System or process for maintaining cost and budget.</li></ul>	5 Points

**RFQ: ARCHITECTURAL FIRMS**

November 19, 2007

Page 9

	<ul style="list-style-type: none"> <li>Evidence of successful budget management for a similar project.</li> </ul>	
<b>D.4</b>	<b><u>Litigation History</u></b> <ul style="list-style-type: none"> <li>Litigation history, if any, is described.</li> <li>If judgment(s) against Proposer, appropriate explanation provided.</li> </ul>	<b>5 Points</b>
<b>D.5</b>	<b><u>References</u></b> <ul style="list-style-type: none"> <li>Provide a minimum of three (3) Professional References for the lead firm, include: Contact name, position, telephone number, and relationship to similar projects.</li> </ul>	<b>Pass/Fail</b>
<b>D.6</b>	<b><u>Relevant Airport Work - Current and Completed Projects(Within last 5 Years)</u></b> <ul style="list-style-type: none"> <li>Provide a narrative and graphic composition of completed Projects with appropriate relevance demonstrating:               <ul style="list-style-type: none"> <li>The ability to design elements listed in Section II above.</li> <li>The ability to maintain user requirements while responding to unique project conditions.</li> <li>Include project name and location, scope of the Proposer's work, project description, year completed and or to be completed, on-budget/on-time summary. Include budgeted/engineering construction cost, bid results and final construction cost. Identify duration of design phase, and construction or estimated duration of construction phase. Provide owner's name address and telephone number. Include a maximum of 5 projects within last 5 years).</li> </ul> </li> </ul>	<b>25 Points</b>
<b>D.7</b>	<b><u>Local and Small Business Enterprise</u></b> See Attachment C.	<b>10 Points</b>
	<b>TOTAL</b>	<b>100 Points</b>

**VI. RFQ SCHEDULE**

A. Release of RFQ:	November 19, 2007
B. Proposals Due:	December 13, 2007
C. Short List Notification:	Within 4 weeks after receipt of RFQ responses.
D. Interview of Firms/Selection:	Within 4 weeks after notification.
E. Start Date of Negotiations of Contracts:	Within 4 weeks after the interview date.

**VII. GENERAL**

- A. **Request for Supplemental Information (RFI):** The City reserves the right to require, from any or all consultant candidates supplemental information that clarifies the submitted materials.
- B. **Questions:** All questions/inquiries must be made through the City's designated contact person. Contact with representative(s) other than the City's designated contact person as listed in this RFQ is grounds for disqualification. Notwithstanding the preceding sentence, nothing in this RFQ shall prohibit any member of a prospective Consultant's firm or any persons working for or representing a prospective Consultant from communicating with any person in the City, including, but not limited to, the City Council, regarding an alleged failure of a City employee to follow the procedures or requirements governing the request for qualifications, or any alleged misconduct or impropriety of a City employee related to the request for qualifications.  
**Submit all questions and requests for clarifications regarding this RFQ in writing via fax or email to Victoria M. Ribbs who can be reached by fax at (408) 441-0188, or by email at: [vribbs@sjc.org](mailto:vribbs@sjc.org). Please submit questions on or before December 04, 2007, 3:00 PM.**
- C. The Proposer shall only rely on this Request for Qualification document and any subsequent written supplement(s) issued by the City for preparation of the submittal. Proposers shall not rely on any other written or any oral statements of the City or its officers, directors, employees, or agents regarding the overall project or the package in preparing and submitting the submission.
- D. **Incomplete Qualification Statements:** Incomplete and/or unsigned submissions will not be considered. However, if a submission is incomplete and if it appears that the omission can be corrected promptly, the affected firm may be contacted and offered the opportunity to complete the statements and provide the required information within a prescribed period of time, which will not be extended. If a firm does not respond within the time stated, the Qualification Statement will not be considered.
- E. **Rejection of Submitted Requests for Qualification:** Proposer Statement of Qualifications (SOQ) packages that are not current, accurate, and/or completed accurately in the prescribed format defined shall be considered non-responsive and eliminated from further consideration.
1. The City reserves the right to waive minor irregularities in the SOQ format.
  2. The City reserves the sole right to evaluate the Proposer candidate's qualifications and reject any or all SOQ's.
- F. **Selection Process Termination:** The City reserves the right to accept or reject any item or group(s) of items of a response. The City reserves the right

## RFQ: ARCHITECTURAL FIRMS

November 19, 2007

Page 11

to terminate the selection process, at any time, without making an award to any or all Proposers on the ranked candidate list. The City shall not be obligated to respond to any SOQ submitted, nor be legally bound in any manner by the submission of the SOQ. The City may also, at its sole discretion, choose a ranked Proposer or Proposers to perform any or all of the individual project work phases. The City Manager or City Council must approve the final agreement with the Proposer before any work may start on the project.

### G. **California Public Records Act**

1. All correspondence with the City, including responses to this RFQ, will become the exclusive property of the City and will become public records under the California Public Records Act (Cal. Government Code section 6250 et seq.) All documents that you send to the City will be subject to disclosure if requested by a member of the public. There are a very limited number of narrow exceptions to this disclosure requirement.
2. Do not mark your entire Statement of Qualifications as "Confidential", "Trade Secret", or "Proprietary". Any SOQ which contains language purporting to render all or significant portions of the SOQ "Confidential", "Trade Secret", or "Proprietary", or fails to provide the exemption information required as described below, will be treated as a public record subject to disclosure.
3. The City will not disclose any part of any SOQ before it announces a recommendation for award, on the ground that there is a substantial public interest in not disclosing SOQ's during the evaluation process. After the announcement of a recommended award, all SOQ's received in response to this RFQ will be subject to public disclosure. If you believe that there are portion(s) of your SOQ, which are exempt from disclosure under the Public Records Act, you must mark it as such and state the specific provision in the Public Records Act, which provides the exemption, as well as the factual basis for claiming the exemption. For example, if you submit trade secret information, you must plainly mark the information as "Trade Secret" and refer to the appropriate section of the Public Records Act, which provides the exemption, as well as the factual basis for claiming the exemption.
4. Although the California Public Records Act recognizes that certain confidential trade secret information may be protected from disclosure, the City of San Jose may not be in a position to establish that the information that a Proposer submits is a Trade Secret. If a request is made for information marked "Confidential", "Trade Secret", or "Proprietary", the City will provide Proposers who submitted the information with reasonable notice to seek protection from disclosure by a court of competent jurisdiction.

**VIII. QUALIFICATION STATEMENT REVIEW**

The City will rate prospective Consultants/Firms for this work using only objective criteria based upon the information obtained from the Qualification Statements. The City reserves the right to verify from other available sources the information provided by the Proposer and to rely upon such information gathered during the verification process. The City shall review each SOQ and establish a numeric score based upon written evaluation criteria. Consideration of a prospective Consultant's qualifications will be made only if the prospective Consultant meets all the minimum qualifications. The City reserves the right to adjust, increase, limit, suspend or rescind the rating based on subsequently learned information.

Any Proposer deemed not qualified, or Proposers whose rating changes sufficiently to disqualify them, will be notified in writing. No proposer shall have the right to an appeal based upon an incomplete or late submission of the qualification statement.

**IX. SELECTED CONSULTANT**

The City reserves the right to adjust, increase, limit, suspend or rescind the rankings of the ranked Proposers, based on subsequently learned information. A negotiated agreement for professional consultant services and council approval is required prior to start of work.

**Contract: It is anticipated that the City and the selected firm will negotiate a professional services contract for the time period of approximately three (3) years. The City reserves the right to extend the term of the contract and augment the amount of the contract with the agreement of the selected firm, pending approval by the City of San Jose City Council.**

**X. DISQUALIFICATION**

Factors such as, but not limited to, any of the following may be considered just cause to disqualify a Proposal without further consideration:

- A. Evidence of collusion, directly or indirectly, among Proposers in regard to the amount, terms, or conditions of this Proposal;
- B. Any attempt to improperly influence any member of the selection staff;
- C. Existence of any lawsuit, unresolved contractual claim or dispute between Proposer and the City;
- D. Evidence of incorrect information submitted as a part of the Proposal;
- E. Evidence of Proposer's inability to successfully complete the responsibilities and obligations of the Proposal; and
- F. Proposer's default under any agreement, which results in termination of the agreement.

## **RFQ: ARCHITECTURAL FIRMS**

November 19, 2007

Page 13

### **XI. PROHIBITION OF GIFTS**

City officials are subject to several legal and policy limitations regarding receipt of gifts from persons, firms or corporations either engaged in business with the City, or proposing to do business with the City. The offering of any illegal gift shall be grounds to disqualify a Proposer. To avoid even the appearance of impropriety, Proposers should not offer any gifts or souvenirs, even of a minimal value, to City officers or employees. The successful Proposer shall be subject to the City of San Jose gift prohibition. Said prohibition is found in Chapter 12.08 of the San Jose Municipal Code. The successful Proposer agrees not to offer a City officer or designated employee any gift prohibited by said Chapter.

The offer or giving of any gift by Chapter 12.08 shall constitute a material breach of the Agreement by the successful Proposer. In addition to other remedies the City may have in law or equity, City may terminate the Agreement for such breach.

### **XII. NON-CONFORMING PROPOSAL**

A Proposal shall be prepared and submitted in accordance with the provisions of these RFQ instructions and specifications. Any alteration, omission, addition, variance, or limitation of, from or to a Proposal may be sufficient grounds for non-acceptance of the Proposal, at the sole discretion of the City.

### **XIII. INSURANCE**

The successful Proposer shall procure at its own expense, and keep in effect at all times during the term of any agreement with the City, the types and amounts of insurance as specified in Exhibit B to this RFQ.

### **XIV. NON-DISCRIMINATION/NON-PREFERENTIAL TREATMENT**

The successful Proposer shall not discriminate, in any way, against any person on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, or national origin, in connection with or related to the performance of City of San Jose contracts. Any Consultant who so discriminates or gives preferences shall be deemed not to be a responsible Consultant in accordance with City of San Jose Charter Section 1217.

### **XV. CITY BUSINESS TAX (BUSINESS LICENSE)**

Any consultant doing business with the City of San Jose is required to pay a City of San Jose business tax. Successful consultant(s) must show proof of the tax being paid or pay the City business tax at time of contract award. Please contact the City's Treasury Division of the Finance Department at (408)535-7055 to determine applicable costs.

## **RFQ: ARCHITECTURAL FIRMS**

November 19, 2007

Page 14

### **XVI. SMALL/LOCAL BUSINESS ENTERPRISE**

Identify in the form attached (Attachment C) if your firm (not your subconsultant) is a Local Business Enterprise. The City of San Jose encourages participation of local firms in its projects. By definition, a local firm is one who has a business office within the Santa Clara County limits **AND** has at least one full time employee at that address. If you qualify as a Local Business Enterprise, you may also qualify as a Small Business Enterprise if the total number of employees (regardless of where they are located) is 35 or fewer.

### **XVII. EXAMINATION OF PROPOSED MATERIAL**

The submission of a Proposal shall be deemed a representation and certification by the Proposer that it has investigated all aspects of the RFQ, and it is aware of the applicable facts pertaining to the RFQ process, its procedures and requirements, and that it has read and understood the RFQ. No request for modification of the SOQ shall be considered after it has been submitted on grounds that the Proposer was not fully informed as to any fact or condition.

### **XVIII. ADDITIONAL TERMS AND CONDITIONS**

- A. This RFQ does not commit the City to pay any costs incurred in the submission of the Proposal or in making any necessary studies or analysis in preparation of submission of the Proposal.
- B. **An agreement shall not be binding or valid with the City unless and until it is executed by authorized representatives of the City and the successful Proposer.**

### **IX. ATTACHMENTS**

- Attachment A: Standard Form of Consultant Agreement (Sample Master)
- Attachment B: Insurance Requirements for Consultants
- Attachment C: Request for Contracting Preference for Local and Small Businesses
- Attachment D: Conflict of Interest Form
- Attachment E: Gift Ordinance Policy / Code of Ethics

**ATTACHMENT A**  
**AGREEMENT FOR PROFESSIONAL ARCHITECTURAL DESIGN**  
**CONSULTANT SERVICES**  
**BETWEEN**  
**THE CITY OF SAN JOSE**  
**AND**  
*a Consultant*  
**FOR**  
**AIRPORT AND AIRLINES TENANT IMPROVEMENTS PROJECTS**

This AGREEMENT is made and entered into this \_\_\_\_\_ day of 2007, by and between the City of San Jose, a municipal corporation (hereinafter "CITY"), and *the Consultant*, a California corporation (hereinafter "CONSULTANT"), authorized to conduct business in the State of California.

**RECITALS**

The purpose for which this AGREEMENT is made and all pertinent recitals are listed on EXHIBIT A, entitled "RECITALS", which is attached hereto and incorporated herein.

**THE PARTIES HEREBY AGREE AS FOLLOWS:**

**SECTION 1. SCOPE OF SERVICES.**

The CONSULTANT shall perform those services specified in detail in EXHIBIT B, entitled "SCOPE OF SERVICES", which is attached hereto and incorporated herein.

**SECTION 2. TERM OF AGREEMENT.**

The term of this AGREEMENT shall be from date of execution of this AGREEMENT as written above through December 31, 2010, inclusive, subject to the provisions of Section 12 of this AGREEMENT.

**SECTION 3. SCHEDULE OF PERFORMANCE.**

The CONSULTANT services shall be completed according to the schedule set out in EXHIBIT C, entitled "SCHEDULE OF PERFORMANCE", which is attached hereto and incorporated herein. Time is of the essence in this AGREEMENT.

**SECTION 4. COMPENSATION.**

The compensation paid to the CONSULTANT, including both payment for professional services and reimbursable expenses shall not exceed Five Million Dollars (\$5,000,000). The rate and schedule of payment is set out in EXHIBIT D, entitled "COMPENSATION," which is attached hereto and incorporated herein.

**SECTION 5. METHOD OF PAYMENT.**

Each month, CONSULTANT shall furnish to the CITY a statement of the services formed for compensation during the preceding month. Such statement shall also include a detailed record of the month's actual reimbursable expenditures. Such statement shall be sent to the following address:

The City of San Jose, Department of Public Works  
City Facility Services Division  
Attention: Public Works (*Project Manager*)  
200 E. Santa Clara 6<sup>th</sup> Floor  
San Jose, CA 95113

**SECTION 6. INDEPENDENT CONTRACTOR.**

It is understood and agreed that the CONSULTANT, in the performance of the work and services agreed to be performed by the CONSULTANT, shall act as and be an independent contractor and not an agent or employee of the CITY; and as an independent contractor, the CONSULTANT shall obtain no rights to retirement benefits or other benefits which accrue to the CITY's employees, and the CONSULTANT hereby expressly waives any claim it may have to any such rights.

**SECTION 7. ASSIGNABILITY.**

The parties agree that the expertise and experience of the CONSULTANT are material considerations for this AGREEMENT. The CONSULTANT shall not assign or transfer any interest in this AGREEMENT nor the performance of any of the CONSULTANT's obligations hereunder, without the prior written consent of the CITY. Any attempt by the CONSULTANT to so assign this AGREEMENT or any rights, duties or obligations arising hereunder shall be void and of no effect.

**SECTION 8. SUBCONSULTANTS.**

- A. Notwithstanding Section 7 above, the CONSULTANT may use SUBCONSULTANTS in performing the services under this AGREEMENT upon prior written approval by the CITY's Director of Public Works or the Director's designated agent.
- B. The CONSULTANT shall be responsible for directing the services of the approved SUBCONSULTANTS and for payment of any compensation due. The CITY assumes no responsibility whatsoever concerning SUBCONSULTANT compensation.
- C. The CONSULTANT shall change or add SUBCONSULTANTS only with the prior written approval of the CITY's Public Works Director or the Director's designated agent.

**SECTION 9. INDEMNIFICATION.**

The CONSULTANT shall defend, indemnify and hold harmless the CITY, its officers, employees and agents against any claim, loss or damages arising out of or resulting in any way from services performed under this AGREEMENT due to the willful or negligent acts (active or passive) or omissions by the CONSULTANT's officers, employees or agents. The acceptance of said services and duties by the CITY shall not operate as a waiver of such right of indemnification. All of the CONSULTANT's obligations under this Section are intended to apply to the fullest extent permitted by law and shall survive the expiration or sooner termination of this AGREEMENT.

**SECTION 10. INSURANCE REQUIREMENTS.**

The CONSULTANT agrees to have and maintain the policies set forth in EXHIBIT E, entitled "INSURANCE," which is attached hereto and incorporated herein. All policies, endorsements, certificates and/or binders shall be subject to approval by the Director of Finance or the Director's authorized designee ("Risk Manager") of the City of San Jose as to form and content. These requirements

are subject to amendment or waiver if so approved in writing by the Risk Manager. The CONSULTANT agrees to provide the CITY with a copy of said policies, certificates and/or endorsements before work commences under this AGREEMENT.

**SECTION 11. NONDISCRIMINATION.**

The CONSULTANT shall not discriminate, in any way, against any person on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, or national origin, in connection with or related to the performance of this AGREEMENT.

**SECTION 12. TERMINATION.**

- A. The CITY shall have the right to terminate this AGREEMENT, without cause, by giving not less than seven (7) days written notice of termination.
- B. If the CONSULTANT fails to perform any of its material obligations under this AGREEMENT, in addition to all other remedies provided by law, the CITY may terminate this AGREEMENT immediately upon written notice.
- C. The CITY's Director of Public Works is empowered to terminate this AGREEMENT on behalf of the CITY.
- D. In the event of termination, the CONSULTANT shall deliver to the CITY copies of all reports, documents, and other work performed by the CONSULTANT under this AGREEMENT, and upon receipt thereof, The CITY shall pay the CONSULTANT for services performed and reimbursable expenses incurred to the date of termination.

**SECTION 13. GOVERNING LAW.**

The CITY and the CONSULTANT agree that the law governing this AGREEMENT shall be that of the State of California.

**SECTION 14. COMPLIANCE WITH LAWS.**

The CONSULTANT shall comply with all applicable laws, ordinances, codes and regulations of the federal, state, and local governments.

**SECTION 15. CONFIDENTIAL INFORMATION.**

All data, documents, discussions or other information developed or received by or for the CONSULTANT in performance of this AGREEMENT are confidential and not to be disclosed to any person except as authorized by the CITY or as required by law.

**SECTION 16. OWNERSHIP OF MATERIALS.**

All reports, documents, electronic equivalents or other materials developed or discovered by the CONSULTANT or any other person engaged directly or indirectly by CONSULTANT to perform the services required hereunder shall be and remain the property of the CITY without restriction or limitation upon their use.

**SECTION 17. WAIVER.**

The CONSULTANT agrees that waiver by the CITY of any breach or violation of any term or condition of this AGREEMENT shall not be deemed to be a waiver of any other term or condition contained herein or a waiver of any subsequent breach or violation of the same or any other term or condition. The acceptance by the CITY of the performance of any work or services by the CONSULTANT shall not be deemed to be a waiver of any term or condition of this AGREEMENT.

**SECTION 18. CONSULTANT'S BOOKS AND RECORDS.**

- A. The CONSULTANT shall maintain any and all ledgers, books of account, invoices, vouchers, cancelled checks, and other records or documents evidencing or relating to charges for services, or expenditures and disbursements charged to the CITY for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to the CONSULTANT pursuant to this AGREEMENT.
- B. The CONSULTANT shall maintain all documents and records which demonstrate performance under this AGREEMENT for a minimum period of three (3) years, or for any longer period required by law, from the date of termination or completion of this AGREEMENT.
- C. Any records or documents required to be maintained pursuant to this AGREEMENT shall be made available for inspection or audit at no cost to the CITY, at any time during regular business hours, upon written request by the City Attorney, the City Auditor, the City Manager, or a designated representative of any of these officers. Copies of such documents shall be provided to the CITY for inspection at the City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at the CONSULTANT's address indicated for receipt of notices in this AGREEMENT.
- D. Where the CITY has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment, or termination of the CONSULTANT's business, the CITY may, by written request by any of the above-named officers, require that custody of the records be given to the CITY and that the records and documents be maintained in the City Hall. Access to such records and documents shall be granted to any party authorized by the CONSULTANT, the CONSULTANT's representatives, or the CONSULTANT's successor-in-interest.

**SECTION 19. CONFLICT OF INTEREST.**

The CONSULTANT shall avoid all conflict of interest or appearance of conflict of interest in performance of this AGREEMENT.

**SECTION 20. GIFTS.**

- A. The CONSULTANT is familiar with the CITY's prohibition against the acceptance of any gift by a CITY officer or designated employee, which prohibition is found in Chapter 12.08 of the San Jose Municipal Code.
- B. The CONSULTANT agrees not to offer any CITY officer or designated employee any gift prohibited by said Chapter.
- C. The offer or giving of any gift prohibited by Chapter 12.08 shall constitute a material breach of this AGREEMENT by the CONSULTANT. In addition to any other remedies the CITY may have in law or equity, the CITY may terminate this AGREEMENT for such breach as provided in SECTION 12 of this AGREEMENT.

**SECTION 21. DISQUALIFICATION OF FORMER EMPLOYEES.**

The CONSULTANT is familiar with the provisions relating to the disqualification of former officers and employees of the CITY in matters that are connected with former duties or official responsibilities as set forth in Chapter 12.10 of the San Jose Municipal Code ("Revolving Door Ordinance"). The CONSULTANT shall not utilize either directly or indirectly any officer, employee, or agent of the CONSULTANT to perform services under this AGREEMENT, if in the performance of such services, the officer, employee, or agent would be in violation of the Revolving Door Ordinance.

**SECTION 22. SPECIAL PROVISIONS.**

Special provisions, if any, to this AGREEMENT are specified in EXHIBIT F, entitled, "SPECIAL PROVISIONS", which is attached hereto and incorporated herein.

**SECTION 23.           NOTICES.**

All notices and other communications required or permitted under this AGREEMENT shall be in writing and shall be personally served or mailed, postage prepaid and return receipt requested, addressed to the respective parties as follows:

To The CITY:                      name, address, telephone, and fax number

To The CONSULTANT:                      name, address, telephone, and fax number

A notice shall be deemed effective on the date personally delivered or, if mailed, three (3) days after deposit in the mail.

**SECTION 24. VENUE.**

In the event that suit shall be brought by either party to this contract, the parties agree that venue shall be exclusively vested in the state courts of the County of Santa Clara, or if federal jurisdiction is appropriate, exclusively in the United States District Court, Northern District of California, San Jose, California.

**SECTION 25. PRIOR AGREEMENTS AND AMENDMENTS.**

This AGREEMENT, including all Exhibits attached hereto, represents the entire understanding of the parties as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This AGREEMENT may only be modified by a written amendment duly executed by the parties to this AGREEMENT.

**SECTION 26. SEVERABILITY.**

If any term, covenant, condition or provision of this AGREEMENT, or the application thereof to any person or circumstance, shall to any extent be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, covenants, conditions or provisions of this

AGREEMENT, or the application thereof to any person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

**WITNESS THE EXECUTION HEREOF** on the day and year first hereinabove written.

“CITY”

APPROVED AS TO FORM:

CITY OF SAN JOSE, a municipal corporation

\_\_\_\_\_  
Deputy City Attorney

By \_\_\_\_\_

“CONSULTANT”

By \_\_\_\_\_  
Corporate officer, partner, or sole proprietor

Company address  
Employer I.D.

**EXHIBIT A**  
**RECITALS**

WHEREAS, the CITY OF SAN JOSE desires to obtain consultant services to \_\_\_\_\_; and

WHEREAS, \_\_\_\_\_ has the necessary professional expertise and skill to perform such services;

NOW, THEREFORE, the purpose of this AGREEMENT is to retain \_\_\_\_\_ as CONSULTANT to CITY to perform those services specified in SECTION 1 of this AGREEMENT.

**EXHIBIT B**  
**SCOPE OF SERVICES**

CONSULTANT shall perform the following services:

**EXHIBIT C**  
**SCHEDULE OF PERFORMANCE**

Work shall commence immediately upon execution of this AGREEMENT. The estimated time for completion is December 31, 2010.

**EXHIBIT D**  
**COMPENSATION**

City agrees to compensate CONSULTANT in the sum of \_\_\_\_\_ DOLLARS(\$\_\_\_\_\_) for professional services performed in accordance with the terms and conditions of this AGREEMENT.

The maximum amount of compensation to be paid to CONSULTANT under this AGREEMENT, including both payment for professional services and reimbursable expenses, shall not exceed One Million Five Hundred Thousand Dollars (\$1,500,000). Any hours worked for which payment would result in a total exceeding the maximum amount of compensation set forth herein shall be at no cost to CITY.

Reimbursable expenses shall include:

**EXHIBIT E**  
**INSURANCE**

SEE ATTACHMENT B

**EXHIBIT F**  
**SPECIAL PROVISIONS**

End of Attachment A

## **ATTACHMENT B**

### **INSURANCE**

CONTRACTOR, at CONTRACTOR'S sole cost and expense, shall procure and maintain for the duration of this AGREEMENT insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the performance of the services hereunder by CONTRACTOR, its agents, representatives, employees or subcontractors.

#### **A. Minimum Scope of Insurance**

Coverage shall be at least as broad as:

1. The coverage described in Insurance Services Office Commercial General Liability coverage ("occurrence") Form Number CG 0001, including products and completed operations, XCU (Explosion, Collapse & Underground) coverage, fire legal liability \$100,000; and

2. The coverage described in Insurance Services Office Form Number CA 0001 covering Automobile Liability, Code 1 "any auto", or Code 2 "owned autos" and Endorsement CA 0025. Coverage shall also include Code 8 "hired autos" and Code 9 "nonowned autos"; and

3. Workers' Compensation insurance as required by the California Labor Code and Employers Liability insurance.

4. Professional Liability Errors and Omissions.

#### **B. Minimum Limits of Insurance**

CONTRACTOR shall maintain limits no less than:

1. Commercial General Liability: \$5,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit; and

2. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage; and

3. Workers' Compensation and Employers' Liability: Workers' Compensation limits as required by the California Labor and Employers Liability limits of \$1,000,000 per accident.

4. Professional Liability Errors and Omissions \$2,000,000 Aggregate Limit.

#### **C. Deductibles and Self-Insured Retentions**

Any deductibles or self-insured retentions must be declared to, and approved by CITY's Risk Manager. At the option of CITY, either; the insurer shall reduce or eliminate such deductibles or

self-insured retentions as respects CITY, its officers, employees, agents and contractors; or CONTRACTOR shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses in an amount specified by the CITY's Risk Manager.

**D. Other Insurance Provisions**

The policies are to contain, or be endorsed to contain, the following provisions:

1. Commercial General Liability and Automobile Liability Coverages:

a. The City of San Jose, its officers, employees, agents and contractors are to be covered as additional insureds as respects: Liability arising out of activities performed by or on behalf of, CONTRACTOR; products and completed operations of CONTRACTOR; premises owned, leased or used by CONTRACTOR; and automobiles owned, leased, hired or borrowed by CONTRACTOR. The coverage shall contain no special limitations on the scope of protection afforded to CITY, its officers, employees, agents and contractors.

b. CONTRACTOR's insurance coverage shall be primary insurance as respects CITY, its officers, employees, agents and contractors. Any insurance or self-insurance maintained by CITY, its officers, employees, agents or contractors shall be excess of CONTRACTOR's insurance and shall not contribute with it.

c. Any failure to comply with reporting provisions of the policies by CONTRACTOR shall not affect coverage provided CITY, its officers, employees, agents, or contractors.

d. Coverage shall state that CONTRACTOR's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

2. All Coverages:

Each insurance policy required by this AGREEMENT shall be endorsed to state that coverage shall not be suspended, voided, canceled, or reduced in limits except after thirty (30) days' prior written notice has been given to CITY.

**E. Acceptability of Insurers**

Insurance is to be placed with insurers acceptable to CITY's Risk Manager.

**F. Verification of Coverage**

CONTRACTOR shall furnish CITY with certificates of insurance and with original endorsements affecting coverage required by this AGREEMENT. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

Proof of insurance shall be mailed to the following address or any subsequent address as may be directed in writing by the Risk Manager:

City of San Jose - Human Resources  
Risk Management  
200 East Santa Clara St., 2nd Floor - Wing  
San Jose, CA 95113-1905

G. **Subcontractors**

CONTRACTOR shall include all subcontractors as insured under its policies or shall obtain separate certificates and endorsements for each subcontractor.

**Attachment C**

**City of San Jose**

**Request for Contracting Preference for Local and Small Businesses**

Chapter 4.06 of the San Jose Municipal Code provides for a preference for Local and Small Businesses in the procurement of contracts for supplies, materials and equipment and for general and professional consulting services. The amount of the preference depends on whether the vendor qualifies as a Local Business Enterprise\* or Small Business Enterprise\*\* and whether price has been chosen as the determinative factor in the selection of the vendor.

In order to be a Local Business Enterprise (LBE) you must have a current San Jose Business Tax Certificate Number and have an office in Santa Clara County with at least one employee. If you qualify as an LBE you can also qualify as a Small Business Enterprise (SBE) if the total number of employees (*regardless of where they are located*) of your firm is 35 or fewer.

There are two ways in which the preference can be applied. In procurements where price is the determinative factor (*i.e. there are not a variety of other factors being considered in the selection process*) the preference is in the form of a credit applied to the **dollar value** of the bid or quote. For example, a nonlocal vendor submits a quote of \$200 per item and a LBE submits a quote of \$204 per item. The LBE receives a 2.5% credit on the quote, which equals approximately \$5 and thus the LBE will win the award because the quote is evaluated as if it had been submitted as \$199.

In procurements such as RFP there are usually a variety of factors evaluated to determine which proposal best meets the City's needs. In procurements such as these where price is not the determinative factor, an LBE or SBE will be given an **additional 5% to 10% points** in the **scoring** of their proposal.

The following determinations have been made with respect to this procurement: (for official use only)

<b>Type of Procurement</b>	<input type="checkbox"/> Bid	<input type="checkbox"/> Request for Qualifications	<input type="checkbox"/> Request for Proposal
<b>Type of Preference</b>	<input type="checkbox"/> Price is Determinative		<input type="checkbox"/> Price is Not Determinative
<b>Amount of Preference</b>	LBE preference = 2.5% of Cost SBE preference = 2.5% of Cost		LBE preference = 5% of Points SBE preference = 5% of Points

**In order to be considered for any preference you must fill out the following statement(s) under penalty of perjury.**

<b>Business Name</b>			
<b>Business Address</b>			
<b>Telephone No.</b>			
<b>Type of Business</b>	<input type="checkbox"/> Corporation	<input type="checkbox"/> LLC	<input type="checkbox"/> LLP
	<input type="checkbox"/> General Partnership	<input type="checkbox"/> Sole proprietorship	<input type="checkbox"/> Other (explain)

**\*LOCAL BUSINESS ENTERPRISE (LBE) PREFERENCE**

**In order to qualify as an LBE you must provide the following information:**

**Current San Jose Business Tax Certificate Number**

**Address of Principal Business Office or Regional, Branch or Satellite Office with at least one employee located in Santa Clara County:**

**\*\*SMALL BUSINESS ENTERPRISE (SBE) PREFERENCE**

In order to qualify as an SBE you must qualify as an LBE and have 35 or fewer employees. This number is for your **entire** business --NOT just local employees, or employees working in the office address given above.

**Please state the number of employees that your Business has:**

Based upon the forgoing information I am requesting that the Business named above be given the following preferences (*please check*): ☐ Local Business Enterprise ☐ Small Business Enterprise

I declare under penalty of perjury that the information supplied by me in this form is true and correct.

Executed at: \_\_\_\_\_, California

Date: \_\_\_\_\_

Signature \_\_\_\_\_

Print name \_\_\_\_\_

End of Attachment C

Attachment D

**CONFLICT OF INTEREST FORM**

To be completed by consultants making proposals.

**NAME**

**DATE**

**PROPOSED ASSIGNMENT**

In order for the City to assess whether the personnel proposed to be assigned by the successful Proposer to work on the Proposed Assignment have a conflict of interest, this form must be completed by each person that the Proposer intends to assign.

<b>Questions</b>	<b>Yes (Provide Details)</b>	<b>No</b>
1. Do you have any official, professional, financial or personal relationships with any person or firm that might affect your judgment or your ability to provide services to the City that are fair and impartial?		
2. Stock and Investments (a) Do you own any stock in any company likely to be affected by or involved in the Proposed Assignment? (b) Does your spouse or a dependent own any stock in company likely to be affected by or involved in the Proposed Assignment? (c) Do you hold any investments in any entity (e.g. partnership, limited liability company, or a trust) likely to be affected by or involved in the Proposed Assignment? (d) Does your spouse or a dependent hold any investments in any entity (e.g. partnership, limited liability company, or a trust) likely to be affected by or involved in the Proposed Assignment?		

Question	Yes	No
<p>If the answer is yes to any of the above questions, please provide the name of the company and the amount of the stock or investment.</p>		
<p>3. Employment &amp; Consulting</p> <p>(a) Is your spouse or a dependent employed/retained by anyone likely to be affected by or involved in the Proposed Assignment?</p> <p>(b) Has your spouse or dependent been previously employed/retained by anyone likely to be affected by or involved in the Proposed Assignment?</p> <p>(c) Have you been employed/retained by anyone likely to be affected by or involved in the Proposed Assignment?</p>		
<p>If the answer is yes to any of the above questions, please provide name of employer, nature of services provided and if the dates employed or retained</p>		
<p>4. Payments or Gifts</p> <p>(a) Within the past 12 months, have you received any payments or gifts from anyone likely to be affected by or involved in the Proposed Assignment?</p> <p>(b) Within the past 12 months, has your spouse or a dependent received any payments or gifts from anyone likely to be affected by or involved in the Proposed Assignment?</p>		
<p>If the answer is yes, please provide the amount the payment or value of the gift, the name and position of the payor/donor and the date of receipt.</p>		
<p>5. Real Estate</p> <p>(a) Do you own real property that is likely to be affected by or involved in the Proposed Assignment?</p> <p>(b) Does your spouse or a dependent own real property that is likely to be affected by or involved in the Proposed Assignment?</p>		

Question	Yes	No
<p>If the answer is yes, please provide the location of the property.</p>		
<p>6. Positions</p> <p>(a) Do you currently hold a position (e.g. member of a board of directors) of any entity (e.g. a company, partnership, association, nonprofit) that is likely to be affected by or involved in the Proposed Assignment?</p> <p>(b) Does your spouse or a dependent hold a position (e.g. member of a board of directors) of any entity (e.g. a company, partnership, association, nonprofit) that is likely to be affected by or involved in the Proposed Assignment?</p> <p>If the answer is yes, please provide the name of the entity, and the title of the position held.</p>		

If during the course of the evaluation any personal, external, or organizational impairments occur that may affect your ability to do the work and report findings impartially, notify the Program Manager immediately

\_\_\_\_\_  
Signature

**Attachment E**

**GIFT ORDINANCE POLICY / CODE OF ETHICS**